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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

1 **TO THE HONORABLE COURT, ALL PARTIES, AND ALL**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on December 21, 2012 at 11:00 a.m. in
4 Courtroom 15 of the above-entitled Court, located at 450 Golden Gate Avenue, San
5 Francisco, California 94102, Defendant Nevada Property 1 LLC DBA The
6 Cosmopolitan of Las Vegas will, and hereby does, move the Court for an order (i)
7 dismissing with prejudice Plaintiff Sasan Mirkarimi's First Amended Complaint, and
8 each and every claim for relief therein pursuant to Federal Rule of Civil Procedure
9 12(b)(6); or, in the alternative, (ii) striking with prejudice all class allegations therein
10 pursuant to Federal Rules of Civil Procedure 12(f) and 23.

11 The Motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6) on
12 the ground that Plaintiff's claim for violation of Penal Code Sections 632 and 632.7
13 fails to state a claim upon which relief can be granted. Among other things, there is
14 no objectively reasonable expectation of confidentiality in the customer-related
15 communications at issue, and therefore the First Amended Complaint does not state a
16 viable claim. The Motion is also made pursuant to Federal Rules of Civil Procedure
17 12(f) and 23 on the ground that Plaintiff's allegations reflect that a class action
18 cannot be certified. Based on the facts alleged in the First Amended Complaint, a
19 class action cannot be maintained as a matter of law because individualized issues
20 will necessarily predominate. Further, the class is not ascertainable because the
21 resolution of the claims at issue require a determination of the state of mind of each
22 of the potential class members. Moreover, Plaintiff seeks aggregated statutory
23 damages, which, as a matter of law, render all class allegations improper, not
24 superior and will violate due process. These deficiencies cannot be cured.

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